



Memorandum

TO: CITY COUNCIL

FROM: Mayor Chuck Reed

SUBJECT: HOUSING IMPACT FEE

DATE: November 17, 2014

Approved

Date

11/17/14

RECOMMENDATION

Defer consideration of a Housing Impact Fee until further analysis has been done to support the conclusion that building housing causes the need for affordable housing.

BACKGROUND

It is an undisputed fact that the need for affordable housing is great. Far too many families are spending far too much of their income on rent, crushing their capacity to meet other needs. The crisis caused by the State of California when it terminated redevelopment agencies and the need for replacement funding for affordable housing is well documented. However, need alone is not enough of a justification for an impact fee to survive judicial review. More analytical work needs to be done to make it legally defensible.

The nexus study provided by our consultant does not prove that building market rate rental housing causes an increase in the need for affordable housing. The nexus study is based on the assumption that proving causation is not necessary. This novel interpretation of the law would leave few limits on the things that could be funded with impact fees. It will certainly be contested as a violation of the requirement for voter approval of special taxes.

In other areas, such as environmental impacts and transportation impacts, proving impacts is required before we can levy a fee. Consider how much work we had to do to justify the nitrogen deposition fee for the Habitat Conservation Plan.

Whether or not a housing impact fee without an impact is legally defensible will only be known when we finish the litigation process in a couple of years. While there is no certainty in litigation, and reasonable people can differ on how much risk to take, there are steps we could have taken to improve our chances of success.

We could have used a widely accepted tool in economic research: multiple variable regression analysis. Doing a regression analysis would determine the strength of correlation between building housing and the need for affordable housing, while controlling for other factors. Demonstrating a statistically significant correlation would allow us to strongly argue that there is a causal connection between building housing and the need for affordable housing.

Without proof of causation, the housing impact fee “walks like a tax” and “it talks like a tax.” Why not at least make the effort to prove that there is an impact and avoid the tax fight? In the meantime, the Supreme Court might give us guidance when it rules on our Inclusionary Zoning Ordinance.